

CIVIL PROCEDURE RULES REVISION PROJECT

Report of the Smaller Claims Working Group

Justice J. Edward Scanlan is Chair of the Working Group. The other members are:

Justice Gerald R. Moir
Lynn Carey-Hartwell
Michael Donovan, Q.C.
Tim Hill
John Keith
Martin Pink
John E. S. Briggs
Bill Laurence

The Working Group met on three occasions and reached agreement upon the following matters:

1. There should be separate, mandatory simplified procedures for claims under \$100,000 (or such amount as may be determined appropriate by the court).
2. With respect to discovery:
 - Plaintiffs and defendants shall each be entitled to a maximum of five (5) hours of discovery time.
 - In the event that there are multiple plaintiffs or defendants, then the 5 hours would be divided equally, unless otherwise agreed or ordered. The same rule applies to third parties.
 - Discovery could take place over not more than two (2) attendances.
 - Time allowed for discovery beyond five (5) hours would be permitted only with leave of the court upon proof of special circumstances related to the complexity of the case or other justifiable cause.
3. Parties would have to identify all witnesses and provide will say statements with sufficient detail so as to allow the other parties to ascertain the nature of the evidence to be given by the witness. A witness will not be permitted to testify on an issue not covered by their will say

statement. These will say statements should be provided prior to discovery. A witness in respect of whom a will say statement has not been provided will not be allowed to testify at trial unless it can be shown that this was beyond the control of the party or unless leave is granted by the court.

(It was agreed that the "all persons with knowledge" approach of Ontario would not be adopted here.)

4. A claimant would be required to identify, at the time they file their pleadings, whether the claim is under \$100,000. The indication by the claimant that the claim is under \$100,000 is to be treated as an admission and their recovery will be limited to a maximum of \$100,000, exclusive of costs. There would be serious cost consequences for any party who indicates that a claim is in excess of the \$100,000 limit and at the end of the trial it is determined that the claim is less than \$100,000. Due to the complexities of litigation, even in situations where lesser amounts are involved, the court would retain discretion on the issue of costs.

The importance of cost consequences having real teeth was recognized. It was agreed therefore that where serious cost consequences were to be imposed they should be on a "double party & party cost basis".

5. After completion of discoveries, each party shall make a formal offer to settle. If no settlement is achieved, then the court shall consider the offers to settle in the context of cost consequences.
6. The use of interrogatories would not be permitted for claims under \$100,000.
7. It was agreed that the Rules should provide an express power to the court to limit parties' trial time. It was therefore recommended that the Date Assignment Conference judge shall prescribe the total amount of time that the parties will have to present their cases, and that the trial judge shall prescribe the amount of time each party may take for examination and cross-examination.
8. All other Civil Procedure Rules would apply to claims under \$100,000 unless they were inconsistent with specific Rules relating to those smaller claims.

Respectfully submitted,
Justice Edward Scanlan, Chair



